



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 02 2015

OFFICE OF
CIVIL RIGHTS

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In Reply Refer to:

EPA File No.: 04R-14-R10

Curt Fransen
Director
Idaho Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706

RE: Rejection of Administrative Complaint

Dear Mr. Fransen:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), is rejecting administrative complaint No. 04R-14-R10 filed against the Idaho Department of Environmental Quality (DEQ), the Orofino/Whiskey Creek Water and Sewer District, Mr. Howard Eugene Averett, the City of Orofino, and Clearwater County received on March 24, 2014. The complaint alleges that the named entities and individual violated Title VI of the Civil Rights Act of 1964, as amended, (Title VI), 42 United States Code (U.S.C.) 2000d *et seq.*, and the EPA's nondiscrimination regulations found at 40 Code of Federal Regulations (C.F.R.) Part 7.

Pursuant to the EPA's nondiscrimination administrative regulations, the OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral to the appropriate Agency. *See* 40 C.F.R. § 7.120(d)(1). For a complaint to be accepted for investigation, the complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. First, the complaint must be in writing. 40 C.F.R. § 7.120(b)(1). Second, the complaint must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulations (i.e., an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, the complaint must be filed within 180 calendar days of the alleged discriminatory act. 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or a recipient of, EPA financial assistance that allegedly committed the discriminatory act. 40 C.F.R. § 7.15.

After careful consideration, the OCR is rejecting the following allegations for investigation:

Allegation 1

The seller, Howard Eugene Averett, did not install sewer lines on the complainants' recently purchased property. He failed to disclose information prior to the complainants' purchase in 2007.¹

The OCR cannot accept this allegation for investigation because it does not meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. The discriminatory act must, if true, violate the EPA's nondiscrimination regulations. *See* 40 C.F.R. § 7.120(b)(1). The allegation does not identify a discriminatory act that is based on race, color, national origin, sex, or disability. *See id.* Although in writing, the allegation does not specify a precise date of the alleged discriminatory acts, referring only to the years 2007-2008.² *See* 40 C.F.R. § 7.120(b)(2). The OCR cannot accept a complaint for investigation if the alleged discriminatory act occurs more than 180 days prior to filing a complaint. *Id.*

Additionally, Mr. Averett is not a recipient of EPA financial assistance. "Recipient" is defined as:

any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

40 C.F.R. § 7.25. Mr. Averett, a private landowner with no official connection to the State or the EPA, does not meet this definition. Hence, his actions cannot be the basis for a Title VI complaint.

Allegation 2

The Orofino/Whiskey Creek Water and Sewer District, the City of Orofino, or Clearwater County have not adequately responded to the complainants' requests to repair or install proper sewer lines on the complainants' property.³

The OCR cannot accept this allegation for investigation because it does not meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. The discriminatory act must, if true, violate the EPA's nondiscrimination regulations. *See* 40 C.F.R. § 7.120(b)(1). This allegation does not identify a discriminatory act that is based on race, color,

¹ March 17, 2014 letter from the Complainants to the OCR; September 11, 2014 letter from the Complainants to the OCR; September 25, 2014 letter from the Complainants to the OCR; September 30, 2014 letter from the Complainants to the OCR; November 18, 2014 letter from one of the Complainants to the OCR.

² March 17, 2014 letter from the Complainants to the OCR.

³ March 17, 2014 letter from the Complainants to the OCR; September 11, 2014 letter from the Complainants to the OCR; September 25, 2014 letter from the Complainants to the OCR; September 30, 2014 letter from the Complainants to the OCR; November 18, 2014 letter from one of the Complainants to the OCR.

national origin, sex, or disability. *See id.* Although in writing, the claim does not specify a precise date of the alleged discriminatory acts. *See* 40 C.F.R. §7.120(b)(2). Due to the absence of this information, OCR is unable to assess the timeliness of this claim.

Additionally, the Orofino/Whiskey Creek Water and Sewer District, the City of Orofino, and Clearwater County are not recipients of EPA financial assistance.

Allegation 3

The Clearwater County District Court system has failed to remedy Mr. Averett's alleged fraudulent sale of the mobile park home. Cases CV-2012-117 and CV-2013-522. Judge Michael Griffin did not consider the complainants' evidence and the local prosecutors will not prosecute Mr. Averett in criminal court.⁴

The OCR cannot accept this allegation for investigation because it does not meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. The discriminatory act must, if true, violate the EPA's nondiscrimination regulations. *See* 40 C.F.R. § 7.120(b)(1). This allegation does not identify a discriminatory act that is based on race, color, national origin, sex, or disability. *See id.* Although in writing, the claim does not specify a precise date of the alleged discriminatory acts. *See* 40 C.F.R. §7.120(b)(2). Due to the absence of this information, OCR is unable to assess the timeliness of this claim.

Additionally, the Clearwater County District Court is not a recipient of EPA financial assistance.

Allegation 4

The Idaho Department of Environmental Quality (DEQ) has not responded to the complainants' complaint in an appropriate manner. It has failed to investigate the pipes or speak with any park tenants. "The DEQ official simply tells us all to spread lime on the overflows [sic] of human sewage."⁵

The OCR cannot accept this allegation for investigation because it does not meet all of the jurisdictional requirements described in the EPA's nondiscrimination regulations. The Idaho Environmental Quality (DEQ) is a recipient of EPA funding. However, allegation 4 does not meet the discriminatory act and date requirements. The discriminatory act must, if true, violate the EPA's nondiscrimination regulations. *See* 40 C.F.R. § 7.120(b)(1). This allegation does not identify a discriminatory act that is based on race, color, national origin, sex, or disability. *See id.* Although in writing, the claim does not specify a precise date of the alleged discriminatory

⁴ March 17, 2014 letter from the Complainants to the OCR; September 25, 2014 letter from the Complainants to the OCR; September 30, 2014 letter from the Complainants to the OCR; November 18, 2014 letter from one of the Complainants to the OCR.

⁵ March 17, 2014 letter from one of the Complainants to the OCR.

acts. See 40 C.F.R. §7.120(b)(2). Due to the absence of this information, OCR is unable to assess the timeliness of this claim.

Pursuant to our nondiscrimination regulations, the EPA finds that it lacks legal jurisdiction to investigate this complaint further and is thus rejecting it for the reasons noted.

If you have questions regarding this letter, please contact Jonathan Stein of the Office of Civil Rights External Compliance Program at (202) 564-2088, via e-mail at stein.jonathan@epa.gov, or via mail at U.S. EPA, Office of Civil Rights, (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,



Velveta Golightly-Howell
Director

cc: Elise Packard
Associate General Counsel
Civil Rights & Finance Law Office (MC 2399A)

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